

## Message Text

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PAGE 01 VIENNA 03324 261709Z  
ACTION SCS-03

INFO OCT-01 EUR-12 ISO-00 L-03 SCA-01 JUSE-00 /020 W  
-----270302Z 127278 /14

R 261455Z APR 77  
FM AMEMBASSY VIENNA  
TO SECSTATE WASHDC 1532

LIMITED OFFICIAL USE VIENNA 3324

E.O. 11652:N/A  
TAGS: CGEN (WALUS, FRANK)  
SUBJECT: JUDICIAL ASSISTANCE: UNITED STATES V. FRANK WALUS

REF:STATE 90331

1. EMBASSY VIENNA HAS NOT REPEAT NOT RECEIVED STATE 088706  
CITED AS REFERENCE IN REFTEL AND WE ARE THEREFORE UNAWARE  
OF BACKGROUND OF SUBJECT CASE.

2. FOR DEPARTMENT'S INFO WE ARE FURNISHING FOLLOWING  
RETAKING OF DEPOSITIONS IN AUSTRIA IN EVENT IT MAY BE  
APPLICABLE. UNDER ARTICLE XVIII OF AUSTRO-US TREATY OF  
FRIENDSHIP, COMMERCE AND CONSULAR RIGHTS OF 1928 (TS 838),  
DEPOSITION MAY BE TAKEN BY US CONSULAR OFFICER IN AUSTRIA  
FROM U.S. CITIZEN, ALIEN RESIDENT OF US, AND OCCUPANTS OF  
AMERICAN VESSELS, PROVIDED WITNESS VOLUNTARILY APPEARS BEFORE  
CONOFF. IN ALL OTHER CASES, AUSTRIA PERMITS TESTIMONY OF  
WITNESS TO BE TAKEN HERE ONLY BY LOCAL COURTS BY MEANS OF  
LETTERS ROGATORY. JUSTICE MINISTRY OFFICIALS HAVE CONFIRMED  
FOREGOING TO US AS CORRECTLY REFLECTING AUSTRIAN POSITION  
ON DEPOSITIONS, LATEST APRIL 25.

3. LETTERS ROGATORY ACCOMPANIED BY GERMAN TRANSLATION  
MUST BE FORWARDED BY EMBASSY TO AUSTRIAN FEDERAL MINISTRY  
OF FOREIGN AFFAIRS. LATTER TRANSMITS LETTERS ROGATORY TO  
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MINISTRY OF JUSTICE WHICH REFERS THEM TO APPROPRIATE  
LOCAL COURT FOR TAKING OF TESTIMONY. TESTIMONY IS  
NORMALLY TAKEN IN JUDGE'S CHAMBERS AND WITNESSES ARE  
EXAMINED BY JUDGE HIMSELF. JUDGE MAY PERMIT PRESENCE  
OF INTERESTED PARTIES INCLUDING AMERICAN ATTORNEYS, BUT  
IS NOT REQUIRED TO DO SO. IN CIVIL CASES, AMERICAN  
ATTORNEYS ARE NORMALLY NOT PERMITTED, HOWEVER, TO

INTERPOSE OBJECTIONS OR QUESTION WITNESSES. INTERESTED PARTIES MAY BE REPRESENTED BY LOCAL ATTORNEYS WHO ARE AUTHORIZED BY LAW TO PARTICIPATE IN HEARING AND TO QUESTION WITNESS AFTER THEIR EXAMINATION BY JUDGE. LETTERS ROGATORY MAY CONTAIN SERIES OF QUESTIONS OR ONLY GENERAL AREA OVER WHICH WITNESS IS TO BE EXAMINED. IN LATTER CASE JUDGE ASKS QUESTIONS HE BELIEVES PERTINENT AND DICTATES SUMMARY OF ANSWERS TO COURT STENOGRAPHER. INTERESTED PARTIES' LOCAL ATTORNEYS MAY SUBSEQUENTLY EXAMINE WITNESS AND JUDGE WILL DICTATE ANSWERS HE BINDS PERTINENT.

4. IN CRIMINAL CASES, U.S. COURT CONCERNED MAY IN LETTERS ROGATORY REQUEST AUTHORITIES TO PERMIT PRESENCE AT HEARING AND INTERROGATION OF WITNESSES BY AMERICAN PROSECUTING AND DEFENSE ATTORNEYS WHO MUST BE IDENTIFIED BY NAME AND FUNCTION IN SAME LETTERS ROGATORY. COURT WILL THEN NOTIFY EMBASSY OF HEARING DATE AND PLACE THROUGH MINISTERIAL CHANNELS GIVING AMPLE ADVANCE NOTICE FOR THE AMERICAN ATTORNEYS TO APPEAR. HEARING WILL BE CONDUCTED AS DESCRIBED IN PARA 3 ABOVE, WITH EXCEPTION THAT AMERICAN ATTORNEYS WILL BE PERMITTED TO QUESTION WITNESSES.

5. EVEN WHEN REQUESTED BY MEANS OF LETTERS ROGATORY, NO DEPOSITION WILL BE TAKEN BY AN AUSTRIAN COURT IN CRIMINAL CASE INVOLVING OFFENSE NOT PUNISHABLE UNDER AUSTRIAN LAW, SUCH AS EVASION OF US TAXES.

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6. ALTERNATIVE WOULD BE TO TAKE DEPOSITIONS OF AUSTRIAN WITNESSES IN MUNICH, IF SUCH PROCEDURE WOULD BE PERMISSIBLE UNDER GERMAN LAW AND WITNESSES APPEAR VOLUNTARILY.

7. SHOULD WITNESSES TO BE EXAMINED HERE IN SUBJECT CASE BE AMERICAN CITIZENS OR ALIEN RESIDENTS OF US, PLEASE ADVISE AND WE WILL MAKE NECESSARY ARRANGEMENTS.  
MEEHAN

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## Message Attributes

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